

A dose of three to four thousandths of an ounce, he said, will prevent sleep for 24 hours, but causes nervousness. A larger amount may be fatal.

The substance is roughly 80 times as strong as the caffeine in coffee and twice as potent as adrenalin or ordinary benzedrine, Dr. Tainter explained.

Dr. Tainter said he and Dr. Armando Novelli, who worked at the faculty of medicine in Buenos Aires, Argentina, had been experimenting with methyl-benzedrine since 1938.

Germany and Denmark also have been working on the drug, and Dr. Tainter said there have been indications that methyl-benzedrine pills have been given German aviators and tank crews to enable them to perform seemingly superhuman tasks of endurance.

The drug has been used to treat victims of nervous breakdown and persons who are dull and depressed or "can't wake up in the morning." In Europe, patients given the preparation have recuperated more quickly after operations, he said.—Palo Alto Times, December 24.

#### Dr. J. B. Harris Heads Medical Academy

Dr. Junius B. Harris has been elected president of the California Academy of Medicine to succeed Dr. Loren Chandler, dean of the Stanford Medical College. Drs. Dan Moulton of Chico, Butte County, and George Sanderson of Stockton, San Joaquin County, were named on the executive committee.

The California Academy of Medicine was formed in 1870.—Sacramento Bee, January 14.

## MEDICAL JURISPRUDENCE†

HARTLEY F. PEART, ESQ.  
San Francisco

### Legal Relationship of Physician and Patient as Affecting Business Transactions Between Them

The legal relationship existing between physician and patient is universally characterized by the courts as being one of trust and confidence, similar in this respect to the relationship of attorney and client or trustee and beneficiary. By reason of this confidential relationship, certain implications arise with respect to all transactions between the parties and as was said in *Cole v. Wolfskill*, 49 Cal. App. 54: "Once this relationship is shown to exist all dealings between the parties will be closely scrutinized to ascertain whether the confidence of the trusting party (the patient) has been betrayed or his mind unduly influenced to his prejudice."

The courts not only subject business dealings between physician and patient to a careful examination whenever their validity or freedom from fraud is questioned, but take the further step of basing a presumption of undue influence on the legal relationship of physician and patient, and wherever it is shown that a physician was presented with some opportunity for deception, such as weakness of intellect on the part of the patient or advanced years, the court will presume that the physician practiced a deception or acted unconscientiously. The net result of this presumption is that the burden is cast upon the physician to prove that in the particular transaction the

patient acted intelligently and with full knowledge of the consequences of his act. This theory of the law, reasonable or unreasonable as it may be in the particular case, comes into play whenever a patient takes some action beneficial to the physician, such as making him a devisee or legatee in his will, or deeding property to him.

An illustration of the doctrine is presented by the case of *MacCauley v. Booth*, 53 A.C.A. 968, decided August 1, 1942. There the patient was suffering from a number of serious ailments and in the early part of 1937 moved from his city residence to a country locality where the defendant physician undertook his treatment, the relationship of physician and patient existing from May, 1937, until the death of the patient in January, 1938. During this period, the attendance of the physician was very frequent, amounting to several visits each week and the treatment was extensive. The evidence adduced at the trial was to the effect that the patient was in financial difficulty and therefore unable to make payment for the medical services rendered in the usual manner, and that, accordingly, he executed and delivered to the physician a promissory note in an amount slightly exceeding \$1,000.00, representing the obligation due the physician for medical services rendered from May, 1937, to January, 1938. The promissory note was secured by a deed of trust upon the premises in which the patient resided and the entire transaction took place the day before the patient's death. The requisite papers were prepared by the patient's attorney and were signed and delivered in the presence of the physician, the attorney and the plaintiff in the instant case, who filed suit after the death of the patient to cancel the trust deed and promissory note.

The plaintiff held a deed of gift of the property executed by the patient some time prior to his death and prior to the deed of trust delivered to the physician and filed suit to set aside the physician's deed on the grounds that the patient was entirely without understanding at the time of the execution of the instruments and that the physician as such had failed to respect the confidential relationship existing between the patient and himself and had gained an unfair advantage in the transaction.

The evidence introduced in the trial court showed that the plaintiff had assisted the patient in signing the necessary papers and that the plaintiff as well as the patient's attorney had been there during the entire transaction and neither had raised any objection at the time. The evidence on the patient's competency at the time was contradictory, but the trial court rendered judgment in favor of the defendant physician, upholding the validity of the promissory note and the deed of trust which he held.

On appeal, the District Court affirmed the judgment holding that the evidence was sufficient to overcome any presumption of undue influence on the part of the physician. The Court reiterated

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

the rule that the confidential relationship between physician and patient necessitates a close examination of all dealings between such parties in order to protect a person in a weakened condition peculiarly subject to suggestions on the part of his physician in whom he must repose a certain amount of confidence and trust. It was held, however, that independent advice was not indispensable to negative the presumption of undue influence. This presumption the court pointed out is by no means conclusive and if at the trial the physician produces sufficient evidence that the patient acted voluntarily and with a full appreciation of the consequences of his act, the transaction will be sustained notwithstanding the confidential relationship.

## LETTERS†

### Concerning Medical Literature to Station Hospitals of Military Camps Located in California

Editor's Note.—In the January issue, report was given and comment made concerning medical journals and books sent by the C.M.A. Postgraduate Committee, to Colleagues in Military Service. (January CALIFORNIA AND WESTERN MEDICINE, page 3.) A letter from the Postgraduate Committee to Medical Officers in Command appears below. Also some replies:

CALIFORNIA MEDICAL ASSOCIATION

*Scientific Assembly: Committee on Postgraduate Activities*

San Francisco, January 29, 1943.

To: *The Medical Officer in Command.*

STATION HOSPITAL  
\_\_\_\_\_, California

FROM: *C.M.A. Postgraduate Committee.*

SUBJECT: *"California and Western Medicine," official journal of California Medical Association.*

Dear Doctor:

Because your Camp is located in California, members of your Hospital Station may be interested in scanning the pages of CALIFORNIA AND WESTERN MEDICINE, official journal of the California Medical Association.

The C.M.A. Postgraduate Committee has arranged to have your Camp placed on the *complimentary mailing list of C. and W. M.*, to permit the JOURNAL to be available in your Station library.

The roster of County Medical Societies appears in each issue, in the front advertising section, on advertising page 4. We know that the members of the local society of the county in which your own Camp is located, will be glad to have members of your own staff feel free to attend and take part in county society meetings.

We also take the liberty of calling your attention to the addresses of the medical libraries in California, on advertising page 5.

Medical news, of a military nature, appears in each issue of C. and W. M., under the caption, "California Committee on Participation of the Medical Profession in the War Effort."

With good wishes, and hoping you will feel free to

† CALIFORNIA AND WESTERN MEDICINE does not hold itself responsible for views expressed in articles or letters when signed by the author.

inform us if, at any time, you think we can be of service.

Cordially and fraternally,

C.M.A. POSTGRADUATE COMMITTEE  
By GEORGE H. KRESS, M. D.,  
*Secretary-Editor.*

STATION HOSPITAL  
OFFICE OF THE SURGEON  
Fort \_\_\_\_\_, California

February 1, 1943.

Dear Dr. Kress:

Thank you very much for your letter of January 29, 1943, and for the copies of CALIFORNIA AND WESTERN MEDICINE which were received some time ago.

Several members of our staff are California doctors, and they, as well as the rest of us, will enjoy and profit by perusing your journals, I am sure.

Thanking you again for the sentiments expressed in your letter of January 29th, I am,

Yours sincerely,  
(Signed) \_\_\_\_\_,  
*Colonel, Medical Corps,*  
*Surgeon.*

STATION HOSPITAL  
OFFICE OF THE SURGEON  
\_\_\_\_\_, Flying School  
\_\_\_\_\_, California

February 1, 1943.

To: *C.M.A. Postgraduate Committee,*  
*San Francisco, California.*

Gentlemen:

Your letter of January 29, 1943, in which you have stated that this camp has been placed on the complimentary mailing list of C. and W. M., has been received and I wish to thank you for the staff, as a whole, for your consideration, and am quite sure it will aid considerably in keeping contact with the medical world outside.

You may be assured that you will be called upon if, at any time, we think you can be of service. Also, the libraries will be used frequently.

Cordially and fraternally,  
(Signed) \_\_\_\_\_,  
*Major, Medical Corps,*  
*Surgeon.*

\_\_\_\_\_, A.A.F. FLYING TRAINING DETACHMENT  
OFFICE OF THE SURGEON  
\_\_\_\_\_, California

December 28, 1942.

SUBJECT: *Medical Literature.*

To: *California Medical Association, 450 Sutter Street,*  
*San Francisco, California.*

1. In receipt of copy of C. & W. M., and letter your office, dated December 24, 1942, same subject, both of which are sincerely appreciated.

2. This effort as presented on page 230, October issue of C. & W. M., in our opinion will be equally appreciated by all Medical Officers in the Armed Forces. The C. & W. M. itself contains considerable information of interest to both of us, and we shall be very highly appreciative if we can be kept on its mailing list.

3. It so happens that Dr. \_\_\_\_\_ prior to entering into the Armed Forces has been a pathologist, and myself, an E.E.N.T. Specialist, and we would both sincerely appreciate literature on these respective subjects, if it can at all be possible.